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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/706,807 | 11/12/2003 | Mark Kiff | 5610 | 6972 |

7590

11/21/2005

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PO Box 1926
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| EXAMINER |
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JUSKA, CHERYL ANN

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| ART UNIT | PAPER NUMBER |
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1771

DATE MAILED: 11/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/706,807

Applicant(s)

KIFF, MARK

Examiner

Cheryl Juska

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14-17 and 19-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 14-17 and 19-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Applicant's amendment filed October 6, 2005, has been entered. Claims 14, 16, and 17 have been amended as requested. Claim 18 has been cancelled and new claims 19-21 have been added. Thus, the pending claims are 1-17 and 19-21.
2. Said amendment is sufficient to withdraw the 102 rejection of claim 14 as being anticipated by the Burns reference (US 4,353,706). Specifically, applicant has amended the claim to limit the steps of providing dye and etching the fabric to being performed separately and sequentially. Since Burns applies a single composition comprising said dye and said etching or fiber degradation agent, the anticipation rejection is withdrawn.

Claim Rejections - 35 USC § 102

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claim 14 stands rejected under 35 U.S.C. 102(e) as being anticipated by US 6,494,925 issued to Child et al. as set forth in section 4 of the last Office Action.

Applicant asserts the present amendment is sufficient to overcome the anticipation by Child (Amendment, page 5, 6th paragraph). The examiner respectfully disagrees. Child teaches separate application of the dye and fiber degrading agent (col. 3, lines 1-11 and Examples 1 and 2). While Example 1 teaches the degrading agent is applied first with the dye following,

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Example 2 teaches a carpet is dyed prior to the application of the fiber degrading composition (col. 9, lines 42-49). Therefore, the rejection is maintained.

Claim Rejections - 35 USC § 103

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,353,706 issued to Burns, Jr. et al.

The 102 rejection of claim 14 has been withdrawn. However, it is argued claim 14 is obvious over the Burns reference. Specifically, Burns teaches the degrading agent may be applied alone as a transparent composition or together with a dye (col. 6, lines 22-29). Hence, it would have been readily obvious to one skilled in the art to apply dye either before or after the degrading agent. Motivation to do so would be to produce various aesthetic effects and/or to avoid mixing of the components. Therefore, claim 14 is rejected.

7. Claims 15-17 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Child or Burns patents as set forth in sections 7-9 of the last Office Action.

8. Claims 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Burns patent.

Claims 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Childs patent in view of the Burns patent.

New claims 15-17 limit the yarns to polyester and the degrading composition to an alkaline composition. However, it is argued that said limitations are not given patentable weight

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at this time. It has been held that to be entitled to weight in method claims, the recited structure limitations therein must affect the method in a manipulative sense, and not to amount to the mere claiming of a use of a particular structure. *Ex parte Pfeiffer* 135 USPQ 31. it is argued that the fiber and degrading composition do not materially effect the process claimed.

In the event said limitations are given patentable weight, it is noted that Burns teaches polyester pile fabrics (col. 3, lines 58-62). Thus, it would have been readily obvious to one skilled in the art to employ polyester fibers rather than the preferred nylon of Childs. Additionally, both Burns and Childs teach the fiber degrading composition may be “any active chemical compound or composition” which performs the fiber degradation (Burns, col. 4, lines 26-35 and Childs, col. 4, lines 58-64). Hence, while the preferred degrading composition may be acidic, it would have been readily obvious to one skilled in the art to select an alkaline composition so long as it degraded the fiber employed. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416. Therefore, claims 17-19 are also rejected.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

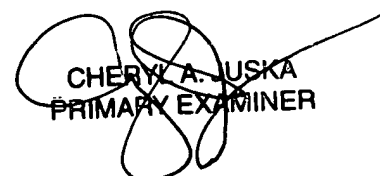
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


CHERYL A. JUSKA
PRIMARY EXAMINER

cj
November 16, 2005